

# Bad reputation

**Monty Jivraj** highlights the reputational damage that businesses risk if they succumb to the lures of tax evasion, in light of the Pandora Papers revelations.

**H**erein lie the ashes of your client's reputation. It is with a heavy heart that we report the sad demise of a previously strong business. Well-known and admired, the owners succumbed to the temptation of tax evasion. Despite warnings and assistance attempts, the company floundered and was left decimated once HMRC called out its lucrative set-up.

This June and July, rival cricket teams England and Australia meet to play the legendary Ashes Test series. The prize? Glory! Oh yes, and the award of a terracotta urn, crafted to celebrate Reginald Shirley Brooks' satirical obituary in the *Sporting Times*, in which he lamented the 1882 death of English cricket. I couldn't resist putting my spin on this old joke for you there.

It's been eight years since England had a win. Could this be our year? New captain, Ben Stokes, said 'We have the belief that there isn't any target or challenge that we can't go after and overcome.'

Inspiring words. Perhaps echoed in the halls and corridors of HMRC.

Banter aside, let's get serious. We have plenty to occupy us through these long summer workdays and, indeed, into the coming seasons.

As discussed by Andy Lynch and Joshua Carey in their article 'The box is open' (*Taxation*, 29 June 2023), earlier this month, HMRC announced an amnesty on disclosures relating to the Pandora Papers. It's a chance to come clean about hidden money in offshore accounts in return for a promise not to prosecute. As tax professionals, we must urge compliance.

Hundreds of 'nudge letters' have been sent, giving recipients 30 days to report taxable offshore income and gains.

## Key points

- In June 2023, HMRC announced an amnesty on disclosures relating to the Pandora Papers.
- 'Nudge letters' have been sent out, giving recipients 30 days to report taxable offshore income and gains.
- Where the individual identified has an authorised tax agent, they should receive a copy of the letter.
- In some countries, it is not illegal to have assets offshore or to use shell companies to do business across national borders – but questions arise as to fairness.
- Deliberate evasion is a different matter that becomes a criminal case.
- A global problem demands a global response.



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As the Chartered Institute of Taxation says, this will likely be the 'first phase' of a broader response.

HMRC will ensure that it has corroboration from other sources, such as the common reporting standard (CRS), which facilitates the global exchange of information between ICO countries.

As tax professionals, we can advise clients on their liabilities before they respond to HMRC. Because arrangements are often highly complex, we must pay particular care when examining and considering these matters.

## What are the Pandora Papers?

- A 2021-22 leak of almost 12 million documents, comprising 2.9 terabytes of data.
- An insight into hidden wealth, tax avoidance and, in some cases, money laundering on a vast scale.
- A glimpse of the 'shadow economy' of offshore profit operating globally, including in the world's largest democracies. Key players in the system include elite institutions – multinational banks, law firms and accounting practices – headquartered in the US and Europe.
- Facilitated via many letterbox companies and trusts, shell companies, incognito bank accounts and other means.
- Hundreds of global politicians and those of the wealthy, powerful elite were implicated.
- The most extensive investigation in the history of journalism. More than 600 journalists in 117 countries trawled through the files from 14 sources for months.
- The data was obtained by the International Consortium of Investigative Journalists (ICIJ) in Washington DC, which worked with over 140 media organisations on its biggest-ever global investigation. BBC Panorama and the *Guardian* led media investigation in the UK.

## Media stories

- The owners of more than 1,500 UK properties bought using offshore firms, including individuals accused of corruption.

- The Qatari ruling family bought two of the UK's most expensive homes in a deal structured to enable them to avoid paying £18.5m in stamp duty.
- The real owners of more than 29,000 offshore companies, traced back to 200 countries and territories, with the largest contingents from Russia, the UK, Argentina and China.

### Where's the harm in tax avoidance?

Of course, in most countries, it is not illegal to have assets offshore or to use shell companies to do business across national borders.

However, there are growing concerns and increasingly vocal condemnation among the electorate about accountability, fairness and equality.

CFE Tax Advisers propose that, as tax advisers, we should set a quality bar for ethical judgment. So we should always ask: 'If it's legal, is it acceptable?'

According to the International Monetary Fund, using tax havens costs governments worldwide up to \$600bn in lost taxes each year.

Offshore operatives don't work in isolation. They partner with other providers worldwide to create networks of companies and trusts. The more complex the arrangements, the higher the fees – and the more secrecy and protection clients can expect.

The Pandora Papers revealed that an English accountant in Switzerland worked with lawyers in the British Virgin Islands to help Jordan's monarch, King Abdullah II, secretly purchase 14 luxury homes worth more than \$106m in the US and the UK. The advisers helped him set up at least 36 shell companies from 1995 to 2017.

In February, Malaysian prime minister Datuk Seri Anwar Ibrahim was asked a parliamentary question about the issue and Malaysia's response. He said: 'At the international level, this is an exposé. Not many countries have the political determination to direct a thorough investigation, but Malaysia is a country which clearly wants to take action and stop this practice – the culture of shifting, looting the country's money.'

### Aiding criminals

A 2019 UK parliamentary report said our system attracts people 'such as money launderers, who may wish to use property to conceal illicit funds'. Criminal investigations are

often 'hindered' because police cannot see who ultimately owns properties.

It was thanks to the Pandora Papers that the shady dealings of Douglas Latchford, the late antiquities dealer, came to light. He used offshore trusts to sell looted Cambodian art. Recipients included private individuals and public institutions, such as the British Museum and the National Gallery of Australia. Today the Cambodian government continues to try and recover its stolen heritage.

Ngozi Okonjo-Iweala, who was appointed World Trade Organisation director-general last March and has twice served as Nigeria's finance minister, said the Pandora Papers showed how UK bankers, lawyers and estate agents help corrupt officials and wealthy individuals in her home country – and in other nations – invest in expensive London real estate through anonymous offshore shell companies.

Delivering the 2021 anti-corruption lecture for Transparency International UK, Okonjo-Iweala said: 'When public monies are stolen, they are often sent abroad to countries not generally thought of as corrupt, where a cottage industry exists of bankers, lawyers, accountants and others, who launder and sequester the ill-gotten funds.'

Back in 2016, Imran Khan told the *Guardian*: 'It is disgusting the way money is plundered in the developing world from people who are already deprived of basic amenities: health, education, justice and employment. This money is put into offshore accounts or even Western countries' banks. The poor get poorer. Poor countries get poorer, and rich countries get richer. Offshore accounts protect these crooks.'

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The Australian Taxation Office said: 'Professional enablers of tax crime operate across international jurisdictions that have a lower perceived risk and a reputation for strict secrecy provisions. This enables additional levels of layering and anonymity for clients. A small number of Australians are on the lookout for ways to evade paying tax. We're also on the

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lookout for tax evasion signs. We have international and domestic intelligence-sharing relationships to uncover even the most intricately planned tax evasion schemes. Australia has international treaties and information exchange agreements with over 100 jurisdictions. The days of the secret tax haven are increasingly numbered.'

A global problem demands a global response.

As tax professionals, we can pull together and use our combined skills, knowledge and strategies to help clients meet their responsibilities. We should all pitch in. Who will bat? Who will defend the wicket?

### Other big leaks

- FinTec.
- Paradise Papers.
- Panama Papers.
- Swiss leaks.
- Luxleaks.
- Offshore leaks 2012-13.

### Learning the lessons?

Encouragingly, the European parliament has spent much time and effort reflecting on what we can learn and take forward. Recently it overwhelmingly voted to adopt a committee report and motion on 'lessons learnt from the Pandora Papers and other revelations'. Acknowledging that illicit financial flows are a matter for global governance, it called for joined-up approaches and systems to ensure tax transparency and raise public trust.

Niels Fuglsang, the rapporteur responsible for the report, wanted the parliament to go further. Members rejected his call for a European minimum tax on capital gains and also his proposal to separate the financial advisory and auditing arms of companies that offer tax advice. He did not hold back in making his response known.

He branded the rejections deplorable, stating: 'We have two sets of rules, one for the 99% of us who go to work and pay their taxes, and one for the top 1% who are able to use offshore accounts, hire tax advisers, hire lawyers that help create shell companies and fake trusts so that they can avoid paying their taxes. And that is basically what we need to do away with.' He continued: 'We deplore the conservatives' moves against tax justice. Considering the lack of progress in reforms since this, biggest ever, leak of offshore papers, this is absolutely disgraceful.'

The UK government has highlighted the work of the National Crime Agency's International Corruption Unit and moved to try and improve beneficial ownership transparency by creating a register.

### Responses to HMRC

The 'nudge' letters offer the recipients the opportunity to correct their tax affairs. One option is to do nothing. But some sort of response is definitely advisable.

Where the individual identified has an authorised tax agent, they should receive a copy of the letter.

HMRC has a dedicated team of call handlers to answer queries. The telephone number is on the letters.

Disclosures could use the contractual disclosure facility (CDF) under code of practice 9. Or worldwide disclosure facility.

The Professional Conduct in Relation to Taxation (PCRT) sets out the principles of professional competence and due care, with a requirement to seek advice from a specialist if a tax advisor does not have the necessary expertise.

### Pandora – what's in a name?

The Pandora Papers – it's a catchy title.

First released in 2009, the hugely popular Avatar movies depict life on the fictional planet of Pandora, which has a toxic atmosphere.

In Greek mythology, Pandora was the first woman on Earth, created by the gods to punish humankind for receiving the stolen gift of fire from the trickster Prometheus. The gods gave Pandora a box of gifts. When it opened, illnesses and hardships caused the mortals to suffer. The myth was intended as a lesson about human weakness and an explanation for humankind's suffering. These days we also use it to refer to getting into a troublesome situation over which one has little control, like 'opening a can of worms'.

Confusingly, in the myth, hope remained in the box. There are many theories about this. Myself, I take it to mean that optimism can be terrific – but we shouldn't just sit back and wait for things to work out well. It's always best to stand firm and take action to get the best result.

### Conclusion

In another Greek myth, Icarus flew too close to the sun and met his downfall by taking too much risk. (Let's give a brief nod here to satirical obituaries and a certain cricket tournament!)

The Pandora Papers and other exposés scattered documents far and wide, publicising dealings hidden away – kept hush-hush – for varied reasons. Discretion is paramount within certain circles of society.

In the cold light of day, tax avoidance is a matter of ethics, risk analysis, personal choice and politics. That's the legal position, although public perception appears increasingly weighted against it. Of course, deliberate evasion is a different matter that becomes a criminal case.

HMRC follow-ups often prove costly in terms of money, effort, reputation and reparations. In this instance, the department says it may pursue criminal prosecution and seek to impose fines of 200%.

Undoubtedly, it's best to respond in a timely and helpful manner to the 'nudge' letters, guided by those with the appropriate knowledge and expertise. ●

#### Author details

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